

*Plot
Hathrop - size
2345 Grand Blvd
KC MO 64108
attn.
C. Siqueiros*

| DOCUMENT | PROJECT | PROPERTY |
|---------------------|----------------------|-------------|
| NUMBER: 09-EUC-0009 | NUMBER: C4-105-03001 | CATEGORY: 2 |

ENVIRONMENTAL USE CONTROL AGREEMENT

Kansas Income Properties, Inc., a Kansas corporation, having a mailing address of 1700 North Universal Avenue, Kansas City, Missouri, hereinafter referred to as "the Owner", is the owner of real property known as the Inter-State Oil (Texwood) Site, at 301 East Donovan Road, in the City of Kansas City, Wyandotte County, Kansas as shown on the map attached hereto as Exhibit A, hereinafter referred to as "the Property", and more particularly described by the following legal description:

Beginning at a point in the North line of the Southeast quarter of Section 34, Township 10 South, Range 25 East of the Sixth Principal Meridian, in Kansas City, Wyandotte County, Kansas, being 1922.01 feet more or less distant East of the center of said Section 34, said point being on the Southeasterly line of that tract of land previously conveyed to the Union Pacific Railroad Company by Warranty Deed dated March 16, 1931, and recorded in Book 825, Page 311 of the records of Wyandotte County, Kansas; then South 19°02'00" West 1105.47 feet to the True Point of Beginning of the tract of land herein described: thence North 27°44'56" East 328.65 feet; thence North 44°03'35" West 17.00 feet to a point of curvature; thence along a curve to the right, not being tangent to the last described course, being 8.50 feet North of and concentric with the centerline of an existing railroad spur, said spur being the most Southerly of two existing railroad spurs, an arc distance of 233.9 feet more or less to a point which bears North 67°59'05" East 228.18 feet from the point of curvature; thence South 89°58'15" East 416.65 feet to a point being 10.00 feet Southerly of the centerline of the Northerly existing railroad spur: thence along a line 10.00 feet Southerly of and parallel with said existing railroad spur South 74°00'41" East 26.55 feet; thence South 00°05'55" East 713.10 feet along the reproduced West line of a now non-existent concrete road to a point of intersection of said West line with the South edge of an existing concrete road; thence along said South edge of an existing concrete road South 89°59'29" West 933.99 feet (961.85 feet deed) to a point on the Easterly line of the existing Union Pacific Railroad Company right-of-way; thence along said right-of-way North 25°54'50" East 29.21 feet; thence North 19°02'00" East 330.00 feet; thence South 70°58'00" East 18.00 feet to the True Point of Beginning. The above described tract contains 557,042 square feet, or 12.79 acres.

And which shall likewise include any and all parcels contained therein.

WHEREAS the Owner has requested, by application to the Kansas Department of Health and Environment, hereinafter referred to as "KDHE", to restrict, prohibit and/or limit certain uses of the Property in accordance with Kansas Statutes Annotated (K.S.A.) 2009 Supp. 65-1,221 *et seq.*

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KDHE has approved the Owner's application to restrict, prohibit, and/or limit certain uses of the Property since residual contamination, which exceeds department standards for unrestricted residential use, remains on the Property.

The conditions at the Property as of the date of KDHE's approval of the application are as follows:

Consent Order Agreement Case No. 95-E-0093 was executed in November 1995 between KDHE and Texwood, LLC (now Chevron) to address soil and groundwater contamination associated with oil-blending operations at the Property. The final remedy for the Property will be assessed in a Corrective Action Study/Corrective Action Plan/Corrective Action.

Soil at the Property is contaminated with petroleum related compounds, primarily total petroleum hydrocarbons reported as gasoline and diesel range organics, and to a lesser extent, benzene, ethylbenzene, toluene, xylene and naphthalene at concentrations exceeding the corresponding KDHE Tier 2 RSK screening values established in the *Risk-Based Standards for Kansas RSK Manual – 4th Version* (RSK) for residential and non-residential use scenarios.

Groundwater contamination at the Property is being addressed under Consent Order Agreement Case No. 96-E-0210 with the adjacent ConocoPhillips facility. The most recent round of groundwater analyses conducted under this Consent Order indicates various petroleum-related compounds similar to those listed for soil contamination at concentrations above RSK screening values at the Property.

KDHE has determined, based on conditions at the Property, the application and other information pertaining to the Property, that environmental use controls are appropriate to ensure future protection of public health and the environment, subject to the conditions herein. Therefore, in accordance with K.S.A. 2009 Supp. 65-1,226 and the rules and regulations promulgated thereunder, the Property is hereby designated by KDHE as a Category 2 property.

The Owner acknowledges that this Agreement runs with the land and is binding on all successors in interest in the Property pursuant to K.S.A. 2009 Supp. 65-1,227(b); and is enforceable by KDHE pursuant to K.S.A. 2009 Supp. 65-1,229, unless and/or until such requirements are mutually terminated in writing by KDHE and Owner or Owner's successor in interest. For purposes of the obligations set forth in this document, "Owner" shall be deemed to include the current Owner and any and all successors in interest.

This Agreement shall be recorded, by the Owner, with the Wyandotte County Register of Deeds for the purposes of providing notice of the environmental use controls, protecting public health and the environment, and to prevent interference with the operation, performance, and/or maintenance of any remedial actions on the Property.

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RESTRICTIONS, PROHIBITIONS AND LIMITATIONS:

Due to the environmental conditions described above, it is the desire and intention of the Owner to restrict, prohibit, and/or limit the following uses of the Property:

- A. The Property shall not be used for residential purposes of any type including, but not limited to, a residence or dwelling, including a house, apartment, mobile home, nursing home, or condominium; or public use area, including a school, educational center, day care center, playground or similar structure, unrestricted outdoor recreational area, or park.
- B. The Owner shall not allow water wells to be drilled, constructed, or used on the Property for the purposes of domestic, lawn and gardening, or other means, which use involves or may involve human consumption and/or other possible human contact uses. This restriction does not prohibit drilling, construction or use of water wells for the purpose of containing product or contamination, or for contaminated ground water recovery, monitoring, or other remediation activities as approved in writing by KDHE.
- C. The Owner shall not file or petition to initiate re-zoning of the Property without fifteen (15) days prior notification to KDHE.
- D. Soils at the Property shall not be excavated or otherwise disturbed in any manner without prior consultation with KDHE.
- E. Any soils excavated from the Property must be tested prior to removal following a KDHE-approved scope of work to determine the proper method of disposal. KDHE shall be provided with notification fifteen (15) calendar days prior to any excavation activities.
- F. The Owner shall inform all easement holders, contractors and/or other workers performing any excavation activities on the Property, prior to such activities, of the potential hazards associated with the direct contact and/or transport of any potentially contaminated and/or hazardous soil or other material from the Property. Easement holders, contractors and/or workers shall also be informed by the Owner of any potential hazards associated with releases from contaminated media located on the Property.
- G. The Owner shall preserve, protect and replace, as necessary, all permanent survey markers and benchmarks and all environmental monitoring stations that may be installed on the Property.
- H. The Owner shall notify and consult with KDHE before undertaking any of the following:
 - 1. Removing any security fencing, signs or devices installed to restrict public access to the Property; or

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2. Constructing buildings or other structures on the Property.
- I. The Owner shall evaluate the vapor intrusion pathway with KDHE during planning and prior to constructing buildings on the Property.
 - J. If the existing building(s) on this Property is removed or modified in such a manner as to provide for exposure to any underlying contamination, the Owner shall notify KDHE no less than fifteen (15) calendar days prior to removal or modification of the existing building(s). KDHE may require soils underlying the existing building(s) be tested to determine any additional hazards to human health and the environment from the exposed soil. Based on the potential hazards associated with the exposed soil as determined by KDHE, KDHE may require specific protective or remedial actions to prevent future impacts to human health and the environment.

LOCAL ORDINANCES AND ZONING:

The Owner and KDHE acknowledge that the following local ordinances and zoning requirements in place at the time of recording this Agreement shall be used in addition to the restrictions, prohibitions and limitations set forth in this Agreement.

The Property is zoned "M3" – Heavy Industrial by the Urban Planning and Land Use Department of the Unified Government of Wyandotte County, Kansas City Kansas.

ACCESS:

The Owner hereby agrees and conveys to KDHE, its agents, contractors, and employees, access to the Property for the term of this Agreement to enter or come upon the Property to inspect the Property and perform any required action (i.e., monitoring, sampling, etc.) KDHE deems necessary for any one or more of the following purposes:

1. Ensuring that use, occupancy, and activities of and at the Property are consistent with this Agreement;
2. Inspecting protective structures and any other remedial systems to ensure their designed operation, performance and structural integrity;
3. Documenting environmental conditions of and at the Property;
4. Ensuring implementation and enforcement of the requirements, restrictions, prohibitions, and other limitations described in this Agreement; and/or

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5. Performing any additional investigations or remediation deemed necessary by KDHE to protect public health and the environment.

FUNDING:

The Owner hereby agrees to submit to KDHE a one-time payment of \$10,000 to compensate KDHE for costs incurred to perform inspections and tracking of the terms and requirements of this Agreement. The Owner acknowledges that the funding requirement for this Agreement is based on the size of the Property, physical properties of residual contamination, types of protective structures at the Property, frequency of KDHE's anticipated inspections and anticipated inspection costs.

DURATION:

The Owner hereby agrees that this Agreement extends in perpetuity unless and/or until removal following approval by KDHE pursuant to K.S.A. 2009 Supp. 65-1,227.

MONITORING AND INSPECTION REQUIREMENTS:

Groundwater monitoring at the Property, currently overseen by KDHE's Bureau of Environmental Remediation under the auspices of the State Cooperative Program, is conducted under Consent Order Agreement Case No. 96-E-0210 with the adjacent ConocoPhillips facility.

The Owner shall visually inspect the Property on an annual basis documenting the condition and current uses of the Property to verify the Property is being used as indicted herein. The Owner shall submit on an annual basis to KDHE, a written report documenting the condition and current uses of the Property to verify the Property is being used as indicated herein. Subsequent written reports shall be submitted annually thereafter within the same month as established by the initial written report. The report shall include information on current uses of the Property, inspection findings, photo documentation and any other information required to verify the terms of this Agreement are being fulfilled.

The Owner may submit and KDHE shall consider modifications of the frequency of inspection and reporting if warranted by technical data. Written approval from KDHE must be obtained for modification of frequency of inspection, reporting requirements or analytical methods throughout the term of this Agreement.

MAINTENANCE REQUIREMENTS:

The Owner hereby agrees to provide maintenance of the ground surface to facilitate surface water runoff and drainage at areas on the Property where contamination remains. Maintenance includes, but is not limited to, inspection and repairs that may include addition of AB-3 Aggregate or soil and

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vegetation to correct the effects of settlement, subsidence, erosion or other events which may provide potential exposure to contamination or potential contaminant migration.

OTHER TERMS AND CONDITIONS:

The Owner hereby agrees to provide KDHE written notification no less than fifteen (15) calendar days prior to any sale, lease, conveyance or other transfer of the Property. The notice shall include the name and business address (if applicable) of the transferee and the expected date of transfer.

The Owner shall cause any lease, grant, or other transfer of any interest in the Property to include a provision expressly requiring the lessee or transferee to comply with the terms of this Agreement. The failure to include such a provision shall not affect the validity or applicability to the Property of this Agreement.

Within fifteen (15) calendar days of real property conveyance, the Owner hereby agrees to provide KDHE a copy of the recorded deed with legal description and corresponding survey map for which this Agreement applies.

The Owner hereby agrees to provide KDHE written notification no less than fifteen (15) calendar days prior to any land use changes at the Property.

The Owner acknowledges that the requirements in this Agreement may not be extinguished, limited or impaired through adverse possession, abandonment, waiver, lack of enforcement, or other common law principles, pursuant to K.S.A. 2009 Supp. 65-1,227(e).

This Agreement may be modified by mutual written agreement by the Owner and KDHE. Within thirty (30) calendar days of executing an amendment, modification, or termination of this Agreement, the Owner shall record such amendment, modification, or termination with the Wyandotte County Register of Deeds, and within thirty (30) calendar days thereafter, the Owner shall provide a copy of the recorded amendment, modification, or termination to KDHE that bears the seal and/or notarized signature of the Register of Deeds.

ENFORCEABILITY:

If the terms of this Agreement are not being implemented by the Owner or contamination at the Property presents a hazard to public health or the environment, KDHE may take such action as authorized by K.S.A. 2009 Supp. 65-1,229, including:

- A. Issue an order directing the Owner to correct any deficiencies and fully implement the terms of this Agreement.
- B. Issue an order retracting this Agreement and any remedial action at the Property and

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requiring the Owner to implement a remedial action at the Property to attain a cleanup standard that will allow for unrestricted use of the Property.

EFFECTIVE DATE OF AGREEMENT:

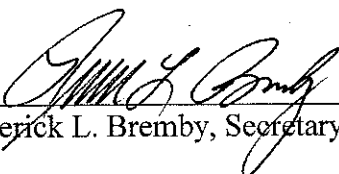
The Owner shall provide to KDHE a copy of this Agreement bearing the seal or notarization of the Register of Deeds in **Wyandotte County** within ninety (90) days from **certified receipt** of this fully executed Agreement from KDHE.

The Owner shall provide KDHE with funding as determined by KDHE in accordance with K.S.A. 2009 Supp. 65-1,226 within ninety (90) days from **certified receipt** of this fully executed Agreement from KDHE.

Proper recording of all necessary documents and submission of required funding shall be conditions precedent to the effectiveness of this Agreement.

IN WITNESS WHEREOF, KDHE and the Owner have entered into and executed this Environmental Use Control Agreement through their duly authorized representatives as of this 17th day of August, 2010.

Kansas Department of Health and Environment

By: 
Roderick L. Bremby, Secretary

ACKNOWLEDGMENT:

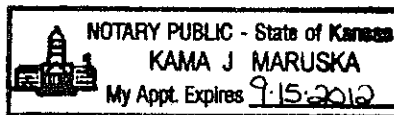
STATE OF KANSAS)
)ss:
COUNTY OF SHAWNEE)

BE IT REMEMBERED, on this 17th day of August, 2010, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Roderick L. Bremby, Secretary and authorized representative of KDHE, who is personally known to be such person who executed the above document on behalf of KDHE, and such person duly acknowledged the execution of the same to be his/her act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at my office in Shawnee County, Kansas, the day and year last written above.

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Kama J Maruska
Notary Public in and for said County and State



My Term Expires: 9-15-2012

Corporation: **Kansas Income Properties, Inc.**

By: [Signature]

Date: 10-8-2010

Print Name: CHARLES J. LAMOTHE

Title: PRESIDENT

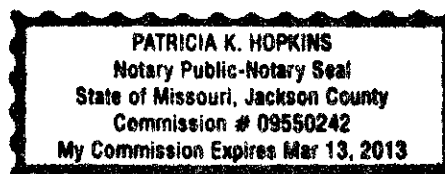
ACKNOWLEDGMENT:

STATE OF Missouri)
)ss:
COUNTY OF Jackson)

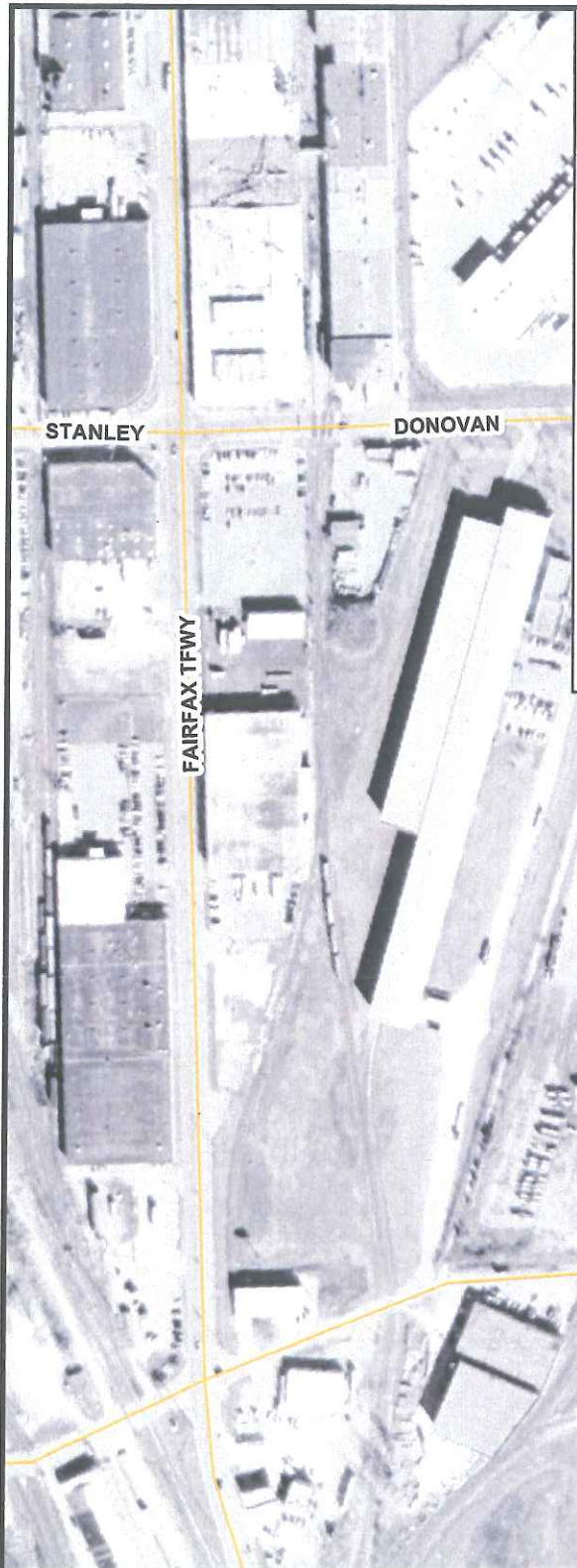
BE IT REMEMBERED, on this 8th day of October, 2010, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Charles J. Lamotte, authorized representative of Kansas Income Properties, Inc., who is personally known to be such person who executed the above document on behalf of said corporation, and such person duly acknowledged the execution of the same to be his/her act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at my office in Jackson County, Missouri, the day and year last written above.

Patricia K Hopkins
Notary Public in and for said County and State



My Term Expires: March 13, 2013



Beginning at a point in the North line of the Southeast quarter of Section 34, Township 10 South, Range 25 East of the Sixth Principal Meridian, in Kansas City, Wyandotte County, Kansas, being 1922.01 feet more or less distant East of the center of said Section 34, said point being on the Southeasterly line of that tract of land previously conveyed to the Union Pacific Railroad Company by Warranty Deed dated March 16, 1931, and recorded in Book 825, Page 311 of the records of Wyandotte County, Kansas; then South 19°02'00" West 1105.47 feet to the True Point of Beginning of the tract of land herein described: thence North 27°44'56" East 328.65 feet; thence North 44°03'35" West 17.00 feet to a point of curvature; thence along a curve to the right, not being tangent to the last described course, being 8.50 feet North of and concentric with the centerline of an existing railroad spur, said spur being the most Southerly of two existing railroad spurs, an arc distance of 233.9 feet more or less to a point which bears North 67°59'05" East 228.18 feet from the point of curvature; thence South 89°58'15" East 416.65 feet to a point being 10.00 feet Southerly of the centerline of the Northerly existing railroad spur: thence along a line 10.00 feet Southerly of and parallel with said existing railroad spur South 74°00'41" East 26.55 feet; thence South 00°05'55" East 713.10 feet along the reproduced West line of a now non-existent concrete road to a point of intersection of said West line with the South edge of an existing concrete road; thence along said South edge of an existing concrete road South 89°59'29" West 933.99 feet (961.85 feet deed) to a point on the Easterly line of the existing Union Pacific Railroad Company right-of-way; thence along said right-of-way North 25°54'50" East 29.21 feet; thence North 19°02'00" East 330.00 feet; thence South 70°58'00" East 18.00 feet to the True Point of Beginning. The above described tract contains 557,042 square feet, or 12.79 acres.

0 150 300 600
Feet



Map Prepared by KDHE

LEGEND

- Local Roads
- EUCA Area Boundary (approximate)

Exhibit A

Inter-State Oil (Texwood) Site
Kansas City, Kansas
09-EUC-0009

In Sec. 34, T10S, R25E



* 2 0 1 0 R - 1 3 2 5 7 1 0 *

2010R-13257

REGISTER OF DEEDS
WYANDOTTE COUNTY, KS
RECORDED ON

10/13/2010 01:14:48PM

REC FEE: 24.00

TECHNOLOGY FEE: 20.00

PAGES: 10

Bk:5721 Pg:56 65